

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARCOS ORTIZ
TDCJ-CID NO.1049113,
Plaintiff,
v.

RICK THALER, *et al.*,
Defendants.

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CIVIL ACTION H-10-0495

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice—Correctional Institutions Division, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Docket Entry No.1). Given plaintiff's litigation history, the Court presumes that he intends to proceed *in forma pauperis*. A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in imminent danger of serious physical harm. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff's complaint does not indicate that he is in imminent danger.¹

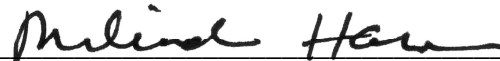
Plaintiff has filed at least five other lawsuits in federal courts while incarcerated in prison or a detention facility. All five have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See Ortiz v. Tutler*, Civil Action No.4:09-4013 (S.D. Tex. Dec. 21, 2009) (enumerating suits).

¹ As in Civil Action No.4:09-4013, plaintiff complains about events that occurred on the Terrell Unit in Rosharon, Texas, in August, 2009. Plaintiff reports that he is now in custody at the Wayne Scott Unit in Angleton, Texas. His allegations, therefore, do not demonstrate that he is under imminent danger of serious physical injury.

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). All pending motions, if any, are DENIED.

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, this 22nd day of February, 2010.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE